

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL DAVID CARR,

Plaintiff,

v.

CUEVA, et al,

Defendants.

No. 2:24-cv-1680 DJC AC P

ORDER

Plaintiff is a state inmate who filed this civil rights action pursuant to 42 U.S.C. § 1983 without a lawyer. He has been granted leave to proceed in forma pauperis. ECF No. 12.

In screening the original complaint, the undersigned gave plaintiff the option to proceed on his cognizable claim against defendant Dr. Dail or amend the complaint. ECF No. 12 at 3-5. Plaintiff elected to amend the complaint, ECF No. 17, and has since filed two amended complaints. ECF Nos. 28, 31.¹ The court now screens the Second Amended Complaint, ECF No. 31.

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¹ According to plaintiff, the two amended complaints are the same except for the removal of one defendant in the second amended complaint. See ECF No. 28 at 4, 15, 16; ECF No. 31 at 4, 15, 16; ECF No. 32 at 2. Although plaintiff refers to both amended complaints as FACs, for the sake of clarity, the court will refer to the most recently filed FAC, ECF No. 31, as the SAC and screen the SAC.

I. Statutory Screening of Prisoner Complaints

The court is required to screen complaints brought by prisoners seeking relief against “a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). The court may dismiss a claim as frivolous if it is based on an indisputably meritless legal theory or factual contentions that are baseless. Id. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir. 1989), superseded by statute on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

In order to avoid dismissal for failure to state a claim a complaint must contain more than “naked assertion[s],” “labels and conclusions,” or “a formulaic recitation of the elements of a cause of action.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 557 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A claim upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678 (citation omitted). When considering whether a complaint states a claim, the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam), and construe the complaint in the light most favorable to the plaintiff, Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

II. Factual Allegations of the Second Amended Complaint

The SAC alleges that defendants Traci Patterson, Dr. Cody Dail, T. Rodriguez, J. Sandoval, and A. Silva violated plaintiff’s constitutional rights, conspired to prevent adequate nutrition in violation of 18 U.S.C. § 241 and 42 U.S.C. § 1985, and denied plaintiff’s rights under the Americans with Disabilities Act. ECF No. 31 at 1-3, 5-7, 9-15. Specifically, plaintiff alleges the following.

Plaintiff suffers from Degenerative Disk Disease, Chronic Obstructive Pulmonary Disease

1 (“COPD”), severe arthritis, old age, and weight problems. Id. at 9-11. On August 13, 2023, at
2 CMF, defendant Rodriguez refused to honor the Substance Abuse Treatment Facility (“SATF”)
3 lay-in/chrono for cell feeding. Id. at 12. As a result, plaintiff went three days without proper
4 nutrition, until a doctor granted plaintiff a six month lay-in for cell feeding. Id. When the six
5 months expired, another doctor granted a ninety day lay-in that expired on May 31, 2024. Id.

6 On April 26, 2024, before plaintiff’s cell feeding chrono expired, defendant Dr. Dail
7 denied renewal because the Chief Executive Officer (“CEO”) of California Medical Facility
8 (“CMF”), defendant Patterson, instituted a “blanket policy denying cell feeding regardless of
9 medical need.” Id. at 9, 10. Despite Dr. Dail’s stated reason for the denial, Dr. Dail’s progress
10 notes from April 26, 2024, falsely claim plaintiff was denied renewal of his cell feed chrono
11 because he “does not meet medical necessity.” Id. at 11. Plaintiff further claims that Dr. Dail
12 made other false representations about plaintiff in his notes and improperly ordered plaintiff to
13 take his KN-95 mask off in the crowded chow hall, even though plaintiff is high-risk to COVID-
14 19 due to his COPD. Id.

15 In July and December 2024, two other doctors and a nurse confirmed that cell feeding was
16 prohibited by management. Id. According to plaintiff, Dr. Dail’s denial based on the no cell feed
17 chrono policy establishes a conspiracy.

18 Plaintiff also claims that defendant Patterson violated his rights by instituting the no cell
19 feeding chrono policy, denying plaintiff cell feeding despite the broken elevators that prevented
20 plaintiff from accessing the chow hall, and submitting a health care grievance on plaintiff’s behalf
21 without plaintiff’s knowledge or consent. Id. at 9, 10.

22 Plaintiff further alleges that while plaintiff’s appeal of Dr. Dail’s denial was pending,
23 CMF kitchen staff continued to send food trays to plaintiff’s cell. Id. at 12. On June 15, 2024,
24 defendant Sandoval blocked delivery of plaintiff’s food tray, causing plaintiff a panic attack,
25 necessitating medication. Id. at 13. That same day, defendant Rodriguez went to the kitchen and
26 ordered that they stop sending plaintiff food trays. Id. at 12. Defendant Rodriguez did this
27 despite knowing that plaintiff had not had breakfast or lunch that day. Id.

28 Defendant Sandoval continued to block food from plaintiff and on August 14, 2024,

1 entered plaintiff's cell and confiscated peanut butter packets another inmate had given plaintiff.
2 Id. at 14. Additionally, on September 3, 2024, another officer told plaintiff that defendant
3 Rodriguez had told the officer not to allow plaintiff to receive donated food trays because he did
4 not have a cell feeding chrono at the time. Id. at 13. Plaintiff claims Rodriguez's and Sandoval's
5 conduct establishes a conspiracy to deprive him of adequate nutrition. Id.

6 Plaintiff also claims defendant Silva is involved in this conspiracy. Id. at 15. He alleges
7 that on December 11, 2024 and January 6, 2025, defendant Silva refused to allow plaintiff to take
8 his dinner to his cell, despite knowing that this was plaintiff's only meal of the day. Id. at 14.
9 When plaintiff refused to give up his dinner, defendant Silva threw away plaintiff's dinner and
10 conducted a strip search. Id. The second time, defendant Silva searched plaintiff's body and
11 wheelchair, and issued a general chrono "that Forever Forbade Plaintiff From taking any food
12 From the chow hall." Id. Silva did this in spite of Title 15, section 3055, which gives discretion
13 to officers and staff to permit inmates to take food from the chow hall. Id. at 15. Plaintiff asserts
14 that defendant Silva's actions were discriminatory and retaliatory because numerous other
15 inmates are allowed to take food from chow hall with permission from staff. Id.

16 Plaintiff asserts that because of defendants' conduct he was deprived of food for eight
17 months and suffers from constant hunger, fatigue, bowel distress, anemia, vitamin D deficiency,
18 increased stress and anxiety, panic attacks, and unnecessary risk of contracting serious disease.

19 By way of relief, plaintiff seeks monetary damages. Id. at 16, 17. He claims he is entitled
20 to base amount of \$25,000.00 under the Tom Bane Act and separate amounts for each deprivation
21 of a meal and libelous statements. Id. at 16.

22 III. Claims for Which a Response Will Be Required

23 After conducting the screening required by 28 U.S.C. § 1915A(a), and drawing all
24 inferences in the plaintiff's favor, the court finds that plaintiff has adequately stated an Eighth
25 Amendment claim of deliberate indifference to plaintiff's nutritional needs against defendants
26 Patterson, Dr. Dail, Rodriguez, Sandoval, and Silva.

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1 IV. Failure to State a Claim

2 However, the allegations in the complaint are not sufficient to state any First, Fourth, or
3 Fourteenth claims under the U.S. Constitution, or any claims under 18 U.S.C. § 241, 42 U.S.C.
4 § 1985, the ADA, or state laws or regulations.

5 Plaintiff fails to state any claims against defendant Silva. He fails to state a retaliation
6 claim against Silva because he does not allege that Silva's conduct was motivate by plaintiff's
7 protected conduct, and that Silva's conduct chilled plaintiff's exercise of his First Amendment
8 rights in any way. Similarly, plaintiff fails to state an equal protection claim against Silva
9 because he has not alleged that he is a member of any protected class, and that Silva
10 discriminated against him based on such membership. Also, to the extent plaintiff claims
11 defendant Silva's search was unconstitutional, such claim fails because plaintiff does not allege
12 the search was conducted solely for the purposes of harassing him or for Silva's sexual
13 gratification. In fact, plaintiff acknowledges there was a penological justification for the search.
14 Plaintiff also fails to allege any other facts concerning the manner of the search to allow the court
15 to infer it was in some other way unreasonable.

16 Moreover, to the extent plaintiff alleges a Tom Bane Civil Rights Act violation against
17 defendant Silva or any other defendant, such claim fails because he has not stated any cognizable
18 claim against Silva, and because he does not allege any facts regarding the use of threats,
19 intimidation, or coercion with the specific intent to violate plaintiff's constitutional rights.

20 With respect to plaintiff's ADA claim, plaintiff cannot sue Patterson in her individual
21 capacity under the ADA. And although plaintiff also sues Patterson in her official capacity, he
22 fails to state a claim because he has not alleged that he has a qualifying disability under the ADA,
23 and that he was excluded on account of such disability.

24 To the extent plaintiff alleges his due process rights were violated when Patterson
25 submitted a health care grievance on his behalf without his knowledge or consent, he fails to state
26 a claim because inmates lack a constitutional right to a specific prison grievance procedure.
27 Plaintiff's conspiracy claims against defendants Dr. Dail, Rodriguez, Sandoval, and Silva under
28 42 U.S.C. § 1985(3) also fail because vague and conclusory allegations that they conspired,

1 without facts that demonstrate an agreement between the defendants is insufficient. Moreover,
2 even assuming that these officers agreed to implement the no cell feeding policy and that such
3 facts are well-pleaded, they would be entitled to qualified immunity.

4 Plaintiff further fails to state any claim against any defendant for: conspiracy under 18
5 U.S.C. § 241 because § 241 is a criminal statute that does not provide a private right of action;
6 violation of state laws because he does not allege compliance with the Government Claims Act;
7 violation of state regulations because § 1983 claims require a violation of a *federal* right.

8 It appears to the court that plaintiff may be able to allege facts to fix *some* of these
9 problems. Therefore, plaintiff has the option of filing an amended complaint.

10 V. Options from Which Plaintiff Must Choose

11 Based on the court's screening, plaintiff has a choice to make. After selecting an option
12 from the two options listed below, plaintiff must return the attached Notice of Election form to
13 the court within 21 days from the date of this order.

14 **The first option available to plaintiff is to proceed immediately against defendants**
15 **Patterson, Dr. Dail, Rodriguez, Sandoval, and Silva on Eighth Amendment deliberate**
16 **indifference claim to plaintiff's nutritional needs. By choosing this option, plaintiff will be**
17 **agreeing to voluntarily dismiss all other claims against these defendants under the First,**
18 **Fourth, or Fourteenth Amendment to the United States Constitution, or under 18 U.S.C.**
19 **§ 241, 42 U.S.C. § 1985, the ADA, or any state law or regulation. The court will proceed to**
20 **immediately serve the complaint and order a response from defendants Patterson, Dr. Dail,**
21 **Rodriguez, Sandoval, and Silva.**

22 **The second option available to plaintiff is to file an amended complaint to fix the**
23 **problems described in Section IV. If plaintiff chooses this option, the court will set a**
24 **deadline in a subsequent order to give plaintiff time to file an amended complaint.**

25 VI. Plain Language Summary of this Order for Party Proceeding Without a Lawyer

26 Some of the allegations in the complaint state claims against the defendants and some do
27 not. You have stated Eighth Amendment claims against defendants Patterson, Dr. Dail,
28 Rodriguez, Sandoval, and Silva for depriving you of adequate nutrition. You have not stated any

1 other claims against these defendants for the conduct you have alleged.

2 You have a choice to make. You may either (1) proceed immediately on your Eighth
3 Amendment claims against defendants Patterson, Dr. Dail, Rodriguez, Sandoval, and Silva and
4 voluntarily dismiss the other claims; or, (2) try to amend the complaint.

5 To decide whether to amend your complaint, the court has attached the relevant legal
6 standards that may govern your claims for relief. See Attachment A. Pay particular attention to
7 these standards if you choose to file an amended complaint.

8 CONCLUSION

9 In accordance with the above, IT IS HEREBY ORDERED that:


10 1. Plaintiff's allegations against defendants Patterson, Dr. Dail, Rodriguez, Sandoval,
11 and Silva do not state First, Fourth, or Fourteenth Amendment claims under the U.S.
12 Constitution, or any claims under 18 U.S.C. § 241, 42 U.S.C. § 1985, the ADA, or state laws or
13 regulations.

14 2. Plaintiff has the option to proceed immediately on his Eighth Amendment deliberate
15 indifference to plaintiff's adequate nutrition against defendants Patterson, Dr. Dail, Rodriguez,
16 Sandoval, and Silva as set forth in Section III above, or to file an amended complaint.

17 3. Within 21 days from the date of this order, plaintiff shall complete and return the
18 attached Notice of Election form notifying the court whether he wants to proceed on the screened
19 complaint or whether he wants to file an amended complaint.

20 4. If plaintiff does not return the form, the court will assume that he is choosing to
21 proceed on the complaint as screened and will recommend dismissal without prejudice of
22 plaintiff's First, Fourth, and Fourteenth Amendment claims, as well as plaintiff's claims under 18
23 U.S.C. § 241, 42 U.S.C. 1985, the ADA, and state laws and regulations.

24 DATED: April 21, 2025

25 
26 ALLISON CLAIRE
27 UNITED STATES MAGISTRATE JUDGE
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAUL DAVID CARR,

Plaintiff,

v.

DANIEL E. CUEVA, et al.,

Defendants.

No. 2:24-cv-1680 DJC AC P

NOTICE OF ELECTION

Check one:

_____ Plaintiff wants to proceed immediately on his Eighth Amendment claims against defendants Patterson, Dr. Dail, Rodriguez, Sandoval, and Silva without amending the complaint. Plaintiff understands that by choosing this option, the remaining First, Fourth, and Fourteenth Amendment claims under the U.S. Constitution, and claims under 18 U.S.C. § 241, 42 U.S.C. § 1985, the ADA, and state laws and regulations will be voluntarily dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a).

_____ Plaintiff wants time to file an amended complaint.

DATED: _____

Paul David Carr
Plaintiff pro se

Attachment A

This Attachment provides, for informational purposes only, the legal standards that may apply to your claims for relief. Pay particular attention to these standards if you choose to file an amended complaint.

I. Legal Standards Governing Amended Complaints

If plaintiff chooses to file an amended complaint, he must demonstrate how the conditions about which he complains resulted in a deprivation of his constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must specifically identify how each named defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

Plaintiff is also informed that the court cannot refer to a prior pleading in order to make his amended complaint complete. See Local Rule 220. This is because, as a general rule, an amended complaint replaces the prior complaint. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012). Therefore, in an amended complaint, every claim and every defendant must be included.

II. Legal Standards Governing Substantive Claims for Relief

A. Section 1983

Section 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983. Accordingly, "the requirements for relief under [§] 1983 have been articulated as: (1) *a violation of rights protected by the Constitution or created by federal statute*, (2)

proximately caused (3) by conduct of a ‘person’ (4) acting under color of state law.” Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991) (emphasis added).

An officer’s violation of state laws and/or regulations is not grounds for a § 1983 claim. See Case v. Kitsap County Sheriff’s Dept., 249 F.3d 921, 930 (9th Cir. 2001) (quoting Gardner v. Howard, 109 F.3d 427, 430 (8th Cir 1997) (“[T]here is no § 1983 liability for violating prison policy. [Plaintiff] must prove that [the official] violated his constitutional right . . .”). Violations of state law and regulations cannot be remedied under § 1983 unless they also violate a federal constitutional or statutory right. See Nurre v. Whitehead, 580 F.3d 1087, 1092 (9th Cir. 2009) (section 1983 claims must be premised on violation of federal constitutional right); Sweeney v. Ada Cty., Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997) (section 1983 creates cause of action for violation of federal law); Lovell v. Poway Unified Sch. Dist., 90 F.3d 367, 370 (9th Cir. 1996) (federal and state law claims should not be conflated; “[t]o the extent that the violation of a state law amounts the deprivation of a state-created interest that reaches beyond that guaranteed by the federal Constitution, Section 1983 offers no redress”).

B. Personal Involvement and Supervisory Liability

The civil rights statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (citation omitted). To state a claim for relief under section 1983, plaintiff must link each named defendant with some affirmative act or omission that demonstrates a violation of plaintiff’s federal rights.

Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of respondeat superior. Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009) (“In a § 1983 suit . . . the term ‘supervisory liability’ is a misnomer. Absent vicarious

liability, each Government official, his or her title notwithstanding is only liable for his or her own misconduct.”). When the named defendant holds a supervisory position, the causal link between the defendant and the claimed constitutional violation must be specifically alleged; that is, a plaintiff must allege some facts indicating that the defendant either personally participated in or directed the alleged deprivation of constitutional rights or knew of the violations and failed to act to prevent them. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Supervisory liability exists even without overt personal participation in the offensive act if supervisory officials implement a policy so deficient that the policy “itself is a repudiation of constitutional rights” and is “the moving force of a constitutional violation.” Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir. 2013) (citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)).

C. First Amendment Retaliation

“Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal. Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (citations omitted). Filing an inmate grievance is a protected action under the First Amendment. Bruce v. Ylst, 351 F.3d 1283, 1288 (9th Cir. 2003). Harm that “would chill a ‘person of ordinary firmness’ from complaining” is sufficient to find an “adverse action.” Shepard v. Quillen, 840 F.3d 686, 691 (9th Cir. 2016) (quoting Rhodes, 408 F.3d at 569) (placement in administrative segregation or even threat to do so on its own amounts to adverse action satisfying the first element). The mere threat of harm can be a sufficiently adverse action to support a retaliation claim. Id. at 688-89.

D. Fourth Amendment – Searches

The Fourth Amendment protects against unreasonable searches, and that right is not lost to convicted inmates. Jordan v. Gardner, 986 F.2d 1521, 1524 (9th Cir. 1993). However,

1 “incarcerated prisoners retain a limited right to bodily privacy.” Michenfelder v. Sumner, 860
2 F.2d 328, 333 (9th Cir. 1988) (emphasis added).

3 A detention facility’s strip-search policy is analyzed using the test for reasonableness
4 outlined in Bell v. Wolfish, as “[t]he Fourth Amendment prohibits only unreasonable searches.”
5 Bull v. City and County of San Francisco, 595 F.3d 964, 972 (9th Cir. 2010) (alteration in
6 original) (internal quotation marks omitted) (quoting Bell, 441 U.S. 520, 558 (1979)). Under
7 Bell, the court must balance “the need for the particular search against the invasion of personal
8 rights that the search entails.” 441 U.S. at 559. To do so, courts must consider “[1] the scope of
9 the particular intrusion, [2] the manner in which it is conducted, [3] the justification for initiating
10 it, and [4] the place in which it is conducted.” Id.

11 Strip searches that are limited to “visual inspection,” even if “invasive and embarrassing,”
12 can be resolved in favor of the institution. Bull, 595 F.3d at 975 (holding that visual strip
13 searches that are held in a “professional manner and in a place that afforded privacy” and done to
14 prevent the smuggling of contraband did not violate Fourth Amendment); Bell, 441 U.S. at 558
15 (routine visual body cavity searches do not violate prisoners’ Fourth Amendment rights).
16 However, searches done for the purpose of harassment are not constitutionally valid—the
17 Supreme Court has held that “intentional harassment of even the most hardened criminals cannot
18 be tolerated” by the Fourth Amendment’s protections, and that they may even violate the Eighth
19 Amendment. Hudson v. Palmer, 468 U.S. 517, 528, 530 (1984); see also Michenfelder, 860 F.2d
20 at 332 (strip searches that are “excessive, vindictive, harassing, or unrelated to any legitimate
21 penological interest” may be unconstitutional). Strip searches where “a prison staff member,
22 acting under color of law and without legitimate penological justification, touched the prisoner in
23 a sexual manner or otherwise engaged in sexual conduct for the staff member’s own sexual
24 gratification, or for the purpose of humiliating, degrading, or demeaning the prisoner,” Beachchild
25 v. Cobban, 947 F.3d 1130, 1144 (9th Cir. 2020), violate both the Fourth and Eighth Amendments.

26 E. Eighth Amendment Conditions of Confinement

27 For a prison official to be held liable for alleged unconstitutional conditions of
28 confinement, the prisoner must allege facts that satisfy a two-prong test. Peralta v. Dillard, 744

1 F.3d 1076, 1082 (9th Cir. 2014) (citing Farmer v. Brennan, 511 U.S. 825, 837 (1994)). The first
 2 prong is an objective prong, which requires that the deprivation be “sufficiently serious.” Lemire
 3 v. Cal. Dep’t of Corr. & Rehab., 726 F.3d 1062, 1074 (9th Cir. 2013) (citing Farmer, 511 U.S. at
 4 834). To be sufficiently serious, the prison official’s act or omission must result “in the denial of
 5 the ‘minimal civilized measure of life’s necessities.’” Lemire, 726 F.3d at 1074. The objective
 6 prong is not satisfied in cases where prison officials provide prisoners with “adequate shelter,
 7 food, clothing, sanitation, medical care, and personal safety.” Johnson v. Lewis, 217 F.3d 726,
 8 731 (9th Cir. 2000) (quoting Hoptowit v. Ray, 682 F.2d 1237, 1246 (9th Cir. 1982)). “[R]outine
 9 discomfort inherent in the prison setting” does not rise to the level of a constitutional violation.
 10 Johnson, 217 F.3d at 731 (“[m]ore modest deprivations can also form the objective basis of a
 11 violation, but only if such deprivations are lengthy or ongoing”). Rather, extreme deprivations
 12 are required to make out a conditions of confinement claim, and only those deprivations denying
 13 the minimal civilized measure of life’s necessities are sufficiently grave to form the basis of an
 14 Eighth Amendment violation. Farmer, 511 U.S. at 834; Hudson v. McMillian, 503 U.S. 1, 9
 15 (1992). The circumstances, nature, and duration of the deprivations are critical in determining
 16 whether the conditions complained of are grave enough to form the basis of a viable Eighth
 17 Amendment claim. Johnson, 217 F.3d at 731.

18 “Adequate food is a basic human need protected by the Eighth Amendment.” Kennan v.
 19 Hall, 83 F.3d 1083, 1091 (9th Cir. 1996), amended, 135 F.3d 1318 (9th Cir. 1998). Denial of
 20 food service presents a sufficiently serious condition to meet the objective prong of the Eighth
 21 Amendment deliberate indifference analysis. Foster v. Runnels, 554 F.3d 807, 812-13, n.2 (9th
 22 Cir. 2009) (denial of 16 meals over 23 period is sufficiently serious but denial of 2 meals over 9-
 23 week period was not sufficiently serious to meet the objective prong of the Eighth Amendment);
 24 see also LeMaire v. Maass, 12 F.3d 1444, 1456 (9th Cir. 1993) (“The Eighth Amendment
 25 requires only that prisoners receive food that is adequate to maintain health.”). Prison officials
 26 may withhold food service for legitimate penological purposes. Foster, 554 F.3d at 813-814.

27 The second prong focuses on the subjective intent of the prison official. Peralta, 744 F.3d
 28 at 1082 (9th Cir. 2014) (citing Farmer, 511 U.S. at 837). The deliberate indifference standard

1 requires a showing that the prison official acted or failed to act despite the prison official's
 2 knowledge of a substantial risk of serious harm to the prisoner. Id. (citing Farmer, 511 U.S. at
 3 842); see also Redman v. County. of San Diego, 942 F.2d 1435, 1439 (9th Cir. 1991). Mere
 4 negligence on the part of the prison official is not sufficient to establish liability. Farmer, 511
 5 U.S. at 835.

6 F. Fourteenth Amendment Due Process Clause

7 Prisoners do not have “a separate constitutional entitlement to a specific prison grievance
 8 procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855
 9 F.2d 639, 640 (9th Cir. 1988)). Prison officials are not required under federal law to process
 10 inmate grievances in any specific way. See, e.g., Towner v. Knowles, No. 2:08-cv-2823 LKK
 11 EFB, 2009 WL 4281999, at *2, 2009 U.S. Dist. LEXIS 108469 (E.D. Cal. Nov. 20, 2009)
 12 (plaintiff failed to state claims that would indicate a deprivation of his federal rights after
 13 defendant allegedly screened out his inmate appeals without any basis); Williams v. Cate, No.
 14 1:09-cv-0468 OWW YNP, 2009 WL 3789597 at *6, 2009 U.S. Dist. LEXIS 107920 at *6 (E.D.
 15 Cal. Nov. 10, 2009) (“Plaintiff has no protected liberty interest in the vindication of his
 16 administrative claims.”).

17 G. Fourteenth Amendment Equal Protection Clause

18 The Fourteenth Amendment’s Equal Protection Clause requires the State to treat all
 19 similarly situated people equally. City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439
 20 (1985) (citation omitted). “To state a claim for violation of the Equal Protection Clause, a
 21 plaintiff must show that the defendant acted with an intent or purpose to discriminate against him
 22 based upon his membership in a protected class.” Serrano v. Francis, 345 F.3d 1071, 1082 (9th
 23 Cir. 2003) (citing Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998)). Alternatively, a
 24 plaintiff may state an equal protection claim if he shows similarly situated individuals were
 25 intentionally treated differently without a rational relationship to a legitimate government
 26 purpose. Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (citations omitted).

27 “[T]he disabled do not constitute a suspect class’ for equal protection purposes,” Lee v.
 28 City of Los Angeles, 250 F.3d 668, 687 (9th Cir. 2001) (quoting Does 1-5 v. Chandler, 83 F.3d

1 1150, 1155 (9th Cir. 1996)).

2 H. Americans with Disabilities Act

3 “The ADA contains five titles: Employment (Title I), Public Services (Title II), Public
4 Accommodations and Services Operated by Private Entities (Title III), Telecommunications
5 (Title IV), and Miscellaneous Provisions (Title V).” See Americans with Disability Act of 1990,
6 Pub.L. No. 101-336, 104 Stat. 327, 327-28 (1990). Title II of the ADA applies to inmates within
7 state prisons. Pennsylvania Dept. of Corrections v. Yeskey, 524 U.S. 206 (1998). To state a
8 claim for violation of Title II of the ADA, a plaintiff must allege four elements:

9 (1) [H]e is an individual with a disability; (2) he is otherwise
10 qualified to participate in or receive the benefit of some public
11 entity’s services, programs, or activities; (3) he was either excluded
12 from participation in or denied the benefits of the public entity’s
services, programs, or activities, or was otherwise discriminated
against by the public entity; and (4) such exclusion, denial of
benefits, or discrimination was by reason of [his] disability.

13 O’Guinn v. Lovelock Corr. Ctr., 502 F.3d 1056, 1060 (9th Cir. 2007); see also Thompson v.
14 Davis, 295 F.3d 890, 895 (9th Cir. 2002); Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir.
15 2001).

16 “A plaintiff can allege disability discrimination in the provision of inmate services,
17 programs, or activities under the ADA or the Rehabilitation Act by pleading either (1)
18 discrimination based on disparate treatment or impact, or (2) denial of reasonable modifications
19 or accommodations.” Cravotta v. County of Sacramento, 717 F. Supp. 3d 941, 956 (E.D. Cal.
20 2024); see Dunlap v. Ass’n of Bay Area Gov’ts, 996 F. Supp. 962, 965 (N.D. Cal. 1998) (“[T]he
21 ADA not only protects against disparate treatment, it also creates an affirmative duty in some
22 circumstances to provide special, preferred treatment, or ‘reasonable accommodation.’”). To
23 support such a disparate impact claim, a plaintiff must demonstrate that the policy has the “effect
24 of denying meaningful access to public services.” K.M. ex rel. Bright v. Tustin Unified Sch. Dist.,
25 725 F.3d 1088, 1102 (9th Cir. 2013). Although § 12132 does not expressly provide for
26 reasonable accommodations, the implementing regulations provide that “[a] public entity shall
27 make reasonable modifications in policies, practices, or procedures when the modifications are
28 necessary to avoid discrimination on the basis of disability, unless the public entity can

1 demonstrate that making the modifications would fundamentally alter the nature of the service,
 2 program, or activity.” 28 C.F.R. § 35.130(b)(7)(i); see also Pierce v. County of Orange, 526 F.3d
 3 1190, 1215 (9th Cir. 2008).

4 “[I]nsofar as Title II [of the ADA] creates a private cause of action for damages against
 5 the States for conduct that *actually* violates the Fourteenth Amendment, Title II validly abrogates
 6 state sovereign immunity.” United States v. Georgia, 546 U.S. 151, 159 (2006) (emphasis in
 7 original). The proper defendant in an ADA action is the public entity responsible for the alleged
 8 discrimination. United States v. Georgia, 546 U.S. 151, 153 (2006). State correctional facilities
 9 are “public entities” within the meaning of the ADA. See 42 U.S.C. § 12131(1)(A) & (B); Penn.
 10 Dept. of Corrs. v. Yeskey, 524 U.S. 206, 210 (1998); Armstrong v. Wilson, 124 F.3d 1019, 1025
 11 (9th Cir. 1997). ADA claims may not be brought against state officials in their individual
 12 capacities. Stewart v. Unknown Parties, 483 F. App’x 374, 374 (9th Cir. 2012) (citing Lovell v.
 13 Chandler, 303 F.3d 1039, 1052 (9th Cir. 2002)); Garcia v. S.U.N.Y. Health Scis. Ctr. of
 14 Brooklyn, 280 F.3d 98, 107 (2d Cir. 2001) (“[N]either Title II of the ADA nor § 504 of the
 15 Rehabilitation Act provides for individual capacity suits against state officials.” (citations
 16 omitted)).

17 Compensatory damages are available under the ADA when plaintiff demonstrates that the
 18 discrimination he experienced was the result of deliberate indifference, which “requires both
 19 knowledge that a harm to a federally protected right is substantially likely, and a failure to act
 20 upon that the likelihood.” Duvall, 260 F.3d at 1139 (citations omitted). “When the plaintiff has
 21 alerted the public entity to his need for accommodation . . . , the public entity is on notice that an
 22 accommodation is required, and the plaintiff has satisfied the first element of the deliberate
 23 indifference test.” Id. at 1139. “[I]n order to meet the second element of the deliberate
 24 indifference test, a failure to act must be a result of conduct that is more than negligent, and
 25 involves an element of deliberateness.” Id. (citations omitted).

26 I. Tom Bane Civil Rights Act

27 The Tom Bane Civil Rights Act (“Bane Act”), codified at California Civil Code § 52.1,
 28 protects individuals from interference with federal or state rights by creating a cause of action for

such interference that is carried out “by threats, intimidation or coercion.” See Venegas v. County of Los Angeles, 153 Cal.App.4th 1230, 63 Cal.Rptr.3d 741 (2007); Chaudhry v. City of Los Angeles, 751 F.3d 1096, 1105 (9th Cir. 2014). Claims under the Bane Act may be brought against public officials who are alleged to interfere with protected rights, and qualified immunity is not available for those claims. Venegas, 63 Cal.Rptr.3d at 753. The Bane Act requires a specific intent to violate the plaintiff’s rights. Reese v. County of Sacramento, 888 F.3d 1030, 1043 (9th Cir. 2018).

J. State Laws

Under the California Government Claims Act, no action for damages may be commenced against a public employee or entity unless a written claim was timely presented (within six months after the challenged incident) and acted upon before filing suit. See Cal. Govt. Code §§ 905, 945.4, 950.2. The resulting suit must “allege facts demonstrating or excusing compliance with the claim presentation requirement” or the state law claim is subject to dismissal. State of California v. Superior Ct., 32 Cal.4th 1234, 1239 (2004). “The requirement that a plaintiff must affirmatively allege compliance with the [Government Claims Act] applies in federal court.” Butler v. Los Angeles County, 617 F. Supp. 2d 994, 1001 (C.D. Cal. 2008).

K. 18 U.S.C. § 241 (Conspiracy)

Title 18 U.S.C. § 241 is a criminal statute that forbids conspiracy to “injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States.” Section 241 does not provide a private right of action. See Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (holding that 18 U.S.C. § 241 provides “no basis for civil liability”); see also Allen v. Gold Country Casino, 464 F.3d 1044, 1048 (9th Cir. 2006) (no private right of action for violation of criminal statutes).

L. 42 U.S.C. § 1985 (Conspiracy)

To state a cause of action under § 1985(3), a complaint must allege (1) a conspiracy, (2) to deprive any person or a class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, (3) an act by one of the conspirators in furtherance of the

1 conspiracy, and (4) a personal injury, property damage or a deprivation of any right or privilege
 2 of a citizen of the United States. Gillespie v. Civiletti, 629 F.2d 637, 641 (9th Cir. 1980) (citing
 3 Griffin v. Breckenridge, 403 U.S. 88, 102–03 (1971)). “[T]here must be some racial, or perhaps
 4 otherwise class-based, invidiously discriminatory animus behind the conspirators’ action.”
 5 Griffin, 403 U.S. at 102. To state a claim under § 1985(3) for a non-race-based class, the Ninth
 6 Circuit requires “either that the courts have designated the class in question a suspect or quasi-
 7 suspect classification requiring more exacting scrutiny or that Congress has indicated through
 8 legislation that the class required special protection.” Sever v. Alaska Pulp Corp., 978 F.2d
 9 1529, 1536 (9th Cir. 1992) (quoting Schultz v. Sundberg, 759 F.2d 714, 718 (9th Cir. 1985)).
 10 “[T]he absence of a section 1983 deprivation of rights precludes a section 1985 conspiracy claim
 11 predicated on the same allegations.” Caldeira v. County of Kauai, 866 F.2d 1175, 1182 (9th Cir.
 12 1989) (citing Cassettari v. Nevada Cnty., 824 F.2d 735, 739 (9th Cir. 1987)).

13 The Ninth Circuit requires a plaintiff alleging a conspiracy to violate civil rights to “state
 14 specific facts to support the existence of the claimed conspiracy.” Olsen v. Idaho State Bd. of
 15 Med., 363 F.3d 916, 929 (9th Cir. 2004) (citation and internal quotation marks omitted); Caldeira,
 16 866 F.2d at 1181 (“the plaintiff must show an agreement or ‘meeting of the minds’ by the
 17 defendants to violate his constitutional rights”). The mere statement that defendants “conspired”
 18 is not sufficient to state a claim, as “[t]hreadbare recitals of the elements of a cause of action,
 19 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678
 20 (2009).

21 M. Qualified Immunity

22 Even if a constitutional violation occurred, prison officials are entitled to qualified
 23 immunity if they acted reasonably under the circumstances. See Friedman v. Boucher, 580 F.3d
 24 847, 858 (9th Cir. 2009); Anderson v. Creighton, 483 U.S. 635, 646 (1987). When government
 25 officials are sued in their individual capacities for civil damages, a court must “begin by taking
 26 note of the elements a plaintiff must plead to state a claim . . . against officials entitled to assert
 27 the defense of qualified immunity.” Iqbal, 556 U.S. at 675.

28 The doctrine of qualified immunity “protects government officials from ‘liability for civil

1 damages insofar as their conduct does not violate clearly established statutory or constitutional
2 rights of which a reasonable person would have known.” Tibbetts v. Kulongoski, 567 F.3d 529,
3 535 (9th Cir. 2009) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982)). The qualified
4 immunity analysis involves two parts, determining whether (1) whether the facts that a plaintiff
5 has alleged or shown make out a violation of a constitutional right; and (2) whether the right at
6 issue was clearly established at the time of the defendant's alleged misconduct. Saucier, 533 U.S.
7 194, 201 (2001); see Pearson v. Callahan, 555 U.S. 223, 232, 236 (2009); see also Bull, 595 F.3d
8 at 971. A right is clearly established only if “it would be clear to a reasonable officer that his
9 conduct was unlawful in the situation he confronted.” Saucier, 533 U.S. at 202; Norwood v.
10 Vance, 591 F.3d 1062, 1068 (9th Cir. 2010). These prongs need not be addressed in any
11 particular order. Pearson, 555 U.S. at 236.

12 “[C]ourts are divided as to whether or not a § 1985(3) conspiracy can arise from official
13 discussions between or among agents of the same entity.” Ziglar v. Abbasi, 582 U.S. 120, 154
14 (2017); see also Fazaga v. Federal Bureau of Investigation, 965 F.3d 1015, reversed and
15 remanded on other grounds, Federal Bureau of Investigation v. Fazaga, 595 U.S. 344 (2022)
16 (Agent defendants were entitled to qualified immunity because at the time they “entered into or
17 agreed-upon policies devised with other employees of the FBI . . . neither this court nor the
18 Supreme Court had held that an intracorporate agreement could subject federal officials to
19 liability under § 1985(3), and the circuits that had decided the issue were split.”)